

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

KALVIN ANDREAS SNOWDEN,

Plaintiff,

V.

DEPARTMENT OF CORRECTIONS, et. al,

Defendants.

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Civil Action No. CV 04-S-288-NE

MEMORANDUM OF OPINION

This is a civil action pursuant to 42 U.S.C. § 1983 filed by the plaintiff, Calvin Andreas Snowden. In his *pro se* complaint, plaintiff names Officer Donna Walter as defendant. He contends that defendant Walter violated his Eighth Amendment right to be free from cruel and unusual punishment. As compensation for the alleged constitutional violation, plaintiff seeks monetary relief. Defendant Walter filed a motion for summary judgment.

On November 16, 2004, the magistrate judge entered a report and recommendation, recommending that defendant Walter's motion for summary judgment be granted in part and denied in part. On November 26, 2004, plaintiff filed objections to the report and recommendation. (Document #23). Defendants filed no objections to the report and recommendation.

Having carefully reviewed and considered *de novo* all the materials in the file, including the report and recommendation, and the objections thereto, the Court is of the opinion that the magistrate judge's findings of fact and conclusions of law are due to be and are hereby ADOPTED and his recommendation is ACCEPTED.


Accordingly, the Court finds that the motion for summary judgment filed by defendant Walter is due to be GRANTED IN PART and DENIED IN PART. In doing so, the Court

EXPRESSLY FINDS that there are no genuine issues of material fact showing that defendant Walter is liable to plaintiff in her official capacity, and as such, to the extent defendant Walter has been sued in her official capacity, her motion for summary judgment is due to be GRANTED. However, the court EXPRESSLY FINDS that there are genuine issues of material fact showing that defendant Walter is liable to plaintiff in her individual capacity in that she subjected plaintiff to excessive force, and as such, to the extent defendant Walter has been sued in her individual capacity, her motion for summary judgment is due to be DENIED.

Accordingly, the Eighth Amendment excessive force claim against defendant Walter, in her individual capacity, is due to be REFERRED to Magistrate Judge T. Michael Putnam, for further proceedings.

An appropriate order will be entered.

DONE this 14th day of December, 2004.


United States District Judge